

UNITED STATES BANKRUPTCY COURT U.S. COURTS  
DISTRICT OF IDAHO

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In Re:

KEITH DELGADO  
ESTELLA DELGADO

Case No. 02-40892

REC'D \_\_\_\_\_ FILED N  
CAMERON S. BURKE  
CLERK IDAHO \_\_\_\_\_

AMENDED

**CHAPTER 13 PLAN AND RELATED MOTIONS**

*The debtor proposes this Chapter 13 plan. It contains provisions that may significantly affect your rights. It contains matters, which if not objected to, may be accepted by the court as true. Creditors cannot vote on this plan. A creditor who wishes to oppose the plan and related motions may do so by timely filing a written objection. Any objection must be in writing, and must be filed with the Court and served upon the debtor, debtor's attorney, and the Chapter 13 Trustee by the time set by the Court for the first meeting of creditors, within five (5) days thereafter, or as otherwise allowed by law. Absent any written objection, the Court may confirm this plan, accept the valuations and allegations herein, fix interest rates, and grant the motions without further notice or hearing. If a creditor files a timely written objection, that creditor must also appear at the hearing on confirmation of the plan, to assert the objection, or the objection may be denied without further notice or hearing. The provisions of the confirmed plan will bind the debtor and each creditor.*

**NOTICE:**



This Chapter 13 Plan and Related Motions contains all the standard plan language as approved by the United States Bankruptcy Court, District of Idaho. Except fill-in-the-blank sections, designated checked boxes, or claim treatment within any table, there are no modifications to the Court approved plan language.



This Chapter 13 Plan and Related Motions contains language that is different from the standard plan as approved by the United States Bankruptcy Court, District of Idaho. An asterisk immediately preceding the section number designates a modified plan section. No asterisk is provided for any fill-in-the-blank sections, designated check boxes, or claim treatment within a table.

1. PAYMENTS TO TRUSTEE. Such portion of the projected future earnings and income of the debtor as is necessary for the execution of the plan is submitted to the supervision and control of the Chapter 13 Trustee for duration of the plan, to wit:

- 1.1 PERIODIC PAYMENTS. Debtor will pay to the Trustee for a term, not exceeding 36 months the sum of \$ 490.00 monthly.

**1.2 INCOME TAX REFUNDS:**

☐

Debtor projects no income tax refunds during the term of this plan. As a result, no income tax refunds will be turned over to the Trustee; or

☒

Debtor projects income tax refunds during the term of this plan. During the initial three-year plan period, the debtor will turn over to the Trustee all income tax refunds. At any time during the term of the plan, debtor shall be entitled to use a tax refund to pay taxes due any other taxing authority; however, the debtor shall remit any tax refund balance to the trustee. Upon the Trustee's recommendation or upon notice and hearing; the Court may enter an Order entitling the debtor to retain, in whole or in part, income tax refunds owing during the term of the plan to facilitate the terms of this plan or meet the other reasonable or other necessary needs of the debtor.

- A. The debtor(s) will turn over to the Trustee during the term of this plan disposable income pursuant to 11 U. S. C. 1325(b)(1)(b)

**1.3 EARLY PAYOFF.** Debtor may not pay this plan in less than the three-year period without notice to interested parties and an opportunity for hearing before the Court. At debtor's request, with trustee's consent, and after the initial three year plan period, the Court may enter an Order allowing early pay-off without additional notice to creditors and hearing.

**1.4 WAGE DEDUCTION ORDER.** Debtor acknowledges that if the debtor is ever more than thirty (30) days delinquent on any payment due under section 1(a) of this plan, upon request of the trustee a wage deduction order to debtor's employer may immediately issue.

**2. DEFERRAL OF PAYMENTS FOR CAUSE.** The Trustee, for cause, may defer not more than two monthly payments per calendar year without further notice or hearing to parties in interest before the Court.

**3. POST CONFIRMATION RECOVERY OF PROPERTY.** Debtor elects as follows:

(Check One)

☒

The Trustee shall retain the right, post confirmation, to recover monies, to recover property and avoid liens pursuant to 11USC§541, et seq. Any such recovery or avoidance shall, when liquidated, be disbursed to creditors as additional disposable income, in accordance with 11USC§1325(b); OR

☐

The debtor has calculated the right to recover monies, to recover property and avoid liens pursuant to 11USC§541, et seq in the plan payment. As a result, the Trustee shall not retain such further rights, post confirmation.

**4. DISBURSEMENTS & PLAN TREATMENT BY TRUSTEE.** From the payments so received, the trustee shall make disbursements as follows:

**4.1 PROVISIONS FOR PRIORITY CREDITORS.** Full payment of allowed claims entitled to priority under 11USC§507 in deferred cash payments as follows:

**4.1.1 Trustee.** Fees to the Trustee as provided by 28USC§586.

**4.1.2 Attorney.** Fees to the debtor's attorney in the total amount of \$ N/A in equal monthly installments over the initial \_\_\_\_\_ months.

**4.1.3 Maintenance/Child Support.** Unless the holder of the claim agrees otherwise, upon confirmation of the plan and the filing of an allowed claim, any allowed unsecured claim of a spouse, former spouse, or child of debtor, for delinquent maintenance of child support shall be paid:

☐

During the initial \_\_\_\_\_ months of the plan;

☐

in equal monthly installments over the term of the plan; OR

☒

not applicable.

**4.1.4 Taxes.** Unless the holder of the claim agrees otherwise, upon confirmation of the plan and the filing of an allowed claim, any allowed unsecured priority claims of governmental units shall be paid:

☒

during the initial 36 months of the plan; OR

☐

in equal monthly installments over the term of the plan.

To: Bingham County Assessor

#### **4.2 PROVISIONS FOR CREDITORS HOLDING SECURED CLAIMS**

**4.2.1 Modification of Rights Of Holders Of Secured Claims.** To each of the following named creditors the full value of the allowed secured claim held shall be paid, provided a timely allowed claim is filed. Each creditor holding an allowed secured claim shall retain its lien on the collateral securing that claim until the allowed secured value is paid, at which time the lien shall be market value of the creditor's collateral, as set forth in this plan. The allowed secured value shall be amortized at the rate of interest (simple interest, direct reducing), in equal monthly installments over the term of the plan, unless otherwise provided. No pre-confirmation interest shall be paid, unless otherwise provided. Upon payment of the allowed value of the secured claim, the secured creditor's lien shall be released, void of any further effect, including void of any further security interest. Any portion of the debt owed to a creditor in excess of the allowed value of the collateral will be treated in this plan as an unsecured claim. Unless otherwise ordered by the Court, payments shall commence upon filing of an allowable claim and pursuant to the terms of the Order of Confirmation of the plan.

The projected Total Payments constitute the debtor's best estimate of the total of all payments made to the secured creditor on the secured portion of such creditor's claims. At the discretion of the trustee, allowed secured values of \$500 or less may have payment accelerated.

Secured creditor rights and claims will be modified in accordance with the values and terms provided for hereinafter by the debtor. An order valuing the secured portion of a claim, at less than the total amount of the claim, voids the creditor's lien to the extent of the unsecured portion of the claim.

The debtor hereby MOVES the court for an order so fixing the value of the collateral and interest rate as follows:

| <u>CREDITOR</u> | <u>DESCRIPTION OF COLLATERAL</u> | <u>ALLOWED SECURED VALUE</u> | <u>RATE OF INTEREST</u> | <u>PROJECTED TOTAL PAYMENTS</u> |
|-----------------|----------------------------------|------------------------------|-------------------------|---------------------------------|
| Southeast       | 1987 chevy blazer                | \$1,780.65                   | 36.35%                  | 36                              |

If a secured creditor objects to this provision, debtor will nevertheless ask the Court, at the hearing on confirmation, to confirm the plan over such creditor's objection, pursuant to 11USC§1325(a)(5)(B). In the event that any such secured creditor fails to timely file a secured claim, a late filed claim shall be allowed for purposes of distribution payments for secured portion of its claim. In the event that such creditor's late filed claim has an unsecured portion in its proof of claim, no distribution shall be allowed for the unsecured portion of the claim.

**4.2.2 Curing Of Default In Long Term Secured Claims.** To each of the below named creditors, the debtor does not propose to pay, in full, their allowed secured claim during the term of this plan. Each creditor shall retain its lien on the collateral securing the claim until the allowed secured claim is fully paid. The debtor will continue the regular monthly contract payments outside of the plan. Debtor shall pay each post-petition payment as it comes due. The initial payment shall commence on the first full month following the filing of this bankruptcy by debtor. Creditor shall apply the periodic payments under this plan to the earliest payment that is due. Payments shall commence upon filing of an allowable claim and pursuant to the terms of the Order of Confirmation of the plan. Unless otherwise provided, the frequency of payments shall be in approximate equal monthly amounts, during the term of the plan. The Total in Default provided hereafter represents the debtor's projection of the total amount necessary to cure the default. In the event that the creditor's allowed claim provides otherwise, the allowed claim shall control. Each creditor shall further be entitled to receive interest on their claim; as allowed by law. Such interest rate shall be the non-default contract rate of interest provided in the promissory note between each creditor and debtor.

| <u>CREDITOR</u> | <u>REGULAR PAYMENT</u> | <u>TOTAL IN DEFAULT</u> |
|-----------------|------------------------|-------------------------|
| Fair Banks      | \$ 653.19              | \$9,957.67              |

**4.3. REAL & PERSONAL PROPERTY TAX CLAIMS.** The real or business personal property tax claims shall be treated as follows:

- ☒ Real property taxes paid by debtor's mortgage company outside of plan as though provided in Section 5.1
- ☐ Pre-Petition real and/or business personal property taxes will be paid through the plan.
- ☐ Pre-petition real and/or business personal property taxes, not in default, will be paid outside of the plan as though provided in Section 5.1
- ☐ Post-petition claims will be paid by debtor outside of plan.
- ☐ Property, subject to county's tax lien, will be surrendered as though provided in section 5.2
- ☐ Not applicable.

#### 4.4 PROVISIONS FOR UNSECURED CLAIMS

4.4.1 **Classification of Unsecured Claims.** Unless otherwise provided, the following unsecured claims will receive the indicated dollar amounts, in equal monthly installments during the term hereof, on their allowed claim. Payments shall commence upon confirmation of this plan and filing of an allowed claim.

| <u>CREDITOR</u>                             | <u>AMOUNT TO BE PAID</u> |
|---|--------------------------|
| CLASS "A" - Co signed obligations owing to: | \$ N/A                   |
| CLASS "B" - Student loans owing to:         | \$ N/A                   |
| CLASS "C" - Other obligations owing to:     | \$ N/A                   |

4.4.2 **General Unsecured Claims.** Upon confirmation, and at times consistent with other provisions of this plan, the trustee will, from funds available after payment of priority and secured claims, pay pro-rata dividends to all creditors who have filed timely allowed unsecured claims.

5. **DISBURSEMENTS & PLAN TREATMENT BY DEBTOR.** Debtor shall make disbursements directly to creditors and provide to treat claims as follows:

5.1. **LONG TERM SECURED CLAIMS NOT IN DEFAULT AND NOT INCLUDED IN THIS PLAN.** To secured creditors to whom the last payments are due beyond the term of the plan, whose rights are not being modified pursuant to 11USC§1322(b)(2) and are not otherwise impaired, the secured claim of each shall be paid directly by debtor according to the terms of the outstanding agreements with each creditor. Each of the following named secured creditors shall retain their lien on the collateral securing the debt until their allowed claim is fully paid. The debtor will pay these creditors directly as follows:

| <u>CREDITOR</u> | <u>COLLATERAL DESCRIPTION</u> | <u>ESTIMATED BALANCE OWING</u> | <u>PAYMENT OUTSIDE OF PLAN</u> |
|-----------------|-------------------------------|--------------------------------|--------------------------------|
| Fair Banks      | single family home            | \$62,610.71                    | \$653.19                       |

5.2. **SURRENDER OF COLLATERAL.** The debtor will surrender debtor's interest in the following collateral securing each allowed secured claim filed by the following creditors. After surrender of the collateral such creditor's deficiency, if any, after liquidation of the collateral, will be paid as an unsecured claim under the provisions for general unsecured creditors if such creditor amends its secured claim to an unsecured claim for such deficiency. Upon the entrance of the Order Confirming this plan, the automatic stay imposed by 11USC§362(a) shall be terminated pursuant to 11USC§362(d).

| <u>CREDITOR</u> | <u>COLLATERAL TO BE SURRENDERED</u> |
|-----------------|-------------------------------------|
| N/A             |                                     |

**5.3 ASSUMPTION OR REJECTION OF UNEXPIRED LEASES OR EXECUTORY CONTRACTS.** The debtor assumes or rejects the following unexpired leases and/or executory contracts in accordance with 11USC5365.

| <u>CREDITOR</u> | <u>DESCRIPTION OF LEASED PROPERTY</u> | <u>ASSUME OR REJECT</u> |
|-----------------|---------------------------------------|-------------------------|
| N/A             |                                       |                         |

**5.4 JUDICIAL LIEN AVOIDANCE.** The debtor hereby MOVES, pursuant to 11USC5522(f)(1)(A), to avoid the judicial liens of the following creditors. Absent a timely written objection from the creditor by the time set by the Court for the first meeting of creditors or within five (5) days thereafter, the order of confirmation will avoid its lien, and its claim will be treated under section 4.4.2 of this plan. Debtor asserts the property is exempt under IC555-1001, et seq.

| <u>CREDITOR</u> | <u>DESCRIPTION OF JUDGEMENT LIEN</u> | <u>COUNTY &amp; INSTRUMENT NUMBER</u> |
|-----------------|--------------------------------------|---------------------------------------|
| N/A             |                                      |                                       |

**5.5 OTHER LIEN AVOIDANCE.** The debtor hereby MOVES, pursuant to 11USC5522(f)(1)(B), to avoid the non-possessory non-purchase money security interests of the following creditors. Absent a timely written objection from the creditor by the time set by the Court for the first meeting of creditors or within five (5) days thereafter, the order of confirmation will avoid its lien, and its claim will be treated under Section 4.4.2 of this plan.

| <u>CREDITOR</u> | <u>DESCRIPTION OF EXEMPT PROPERTY</u> | <u>EXEMPTION STATUTE</u> |
|-----------------|---------------------------------------|--------------------------|
| N/A             |                                       |                          |

**6. VESTING OF PROPERTY OF THE ESTATE.** Subject only to the liens provided for in this plan upon confirmation of this plan, all property of estate:

- ☒ Shall vest in the debtor; OR  
☐ Shall not vest in the debtor.

**Dated:**

  
Debtor

Debtor 